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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,525	12/22/2003	Angelo Benedetti	BENEDETTI-1	7679
25889	7590	09/20/2006	EXAMINER	
WILLIAM COLLARD COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576			FOX, CHARLES A	
			ART UNIT	PAPER NUMBER
			3652	

DATE MAILED: 09/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/743,525	<b>Applicant(s)</b> BENEDETTI, ANGELO	
	<b>Examiner</b> Charles A. Fox	<b>Art Unit</b> 3652	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2006.
- 2a) ☒ This action is FINAL.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-7 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 1 when first removed from the tipping device they travel along a path on a conveyor that is at least as long as the container before being emptied. The emptying commences once the containers are removed from the tipping device and have moved approximately a distance equal to their length (L1) along the conveying path (T1). As such it is not clear exactly when the emptying commences, as soon as the container is removed from the tipper or after it moves up the conveyors as disclosed. When relying on a limitation as newly presented it must be made clear when the container commences to be emptied. See figure 6. Claims 2-7 depend from claim 1 and have the same 112 problems as claim 1. Correction is required.

***Claim Rejections - 35 USC § 102 - 35 USC § 103***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 8 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Lotti. Claim 8 is rejected under 35 U.S.C. 102(b) as being anticipated by Lotti. Lotti US 4,234,279 discloses a device for emptying containers comprising:

- a tipping device for tipping at least one container from a first upright position to a second unloading position;

- a conveying device (34) for receiving the container from the tipping device;

- an emptying station (32) for emptying said container;

said conveying means comprising a path between said tipping device and said emptying station wherein said length of the path is slightly larger than the length of said container.

wherein the conveying path comprises two conveyors (34,61) arranged in an end to end fashion and a drive (58) for moving the container along the conveyors at a predetermined speed;

- an ejection device (44) for moving said container to said conveying means at a first traveling speed that is faster than said predetermined speed.

Regarding the obviousness of the reference it is noted that the applicant does not positively recite any particular size container be used and the Loti reference only cites an exemplary size of container. As such It would have been obvious to one of ordinary

skill in the art, at the time of invention that any length container could be used with the Lotti reference and still achieve the same expected results.

***Response to Amendment***

The amendments filed on June 30, 2006 have been entered into the record.

***Allowable Subject Matter***

Claim 1 would be would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action. It appears that applicant is trying to claim that the container is completely free of the tipping device prior to the start of emptying of the container. The closest prior art of Lotti while teaching a similar device requires that the emptying of the container start while the tipping device still holds a portion of the container. Rewriting the newly amended section of claim 1 as follows will place claims 1-7 into condition for allowance.

wherein the emptying of the container (2) commences after the container has been entirely unloaded from the tipping device and moved along said path (T1) and said tipping device has returned to said first operating position.

***Response to Arguments***

Applicant's arguments with respect to claims 1-7 have been considered but are moot in view of the new ground(s) of rejection. Regarding the Lotti reference not teaching different speeds during different part of the unloading sequence the applicant is directed to column 8 lines 18-49. In general the speed of the two phases in question are as follows, the container is moved from the tipping device at one speed and then

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emptied at a second lower speed. Otherwise (B2) would not be able to move immediately behind (B1). As such the argument is not persuasive. The instant application as claimed does not structurally distinguish over the Lotti reference other than the fact that the emptying in the instant invention starts after the entire container is removed from the tipping device. This is not set forth in claim 8.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Fox whose telephone number is 571-272-6923. The examiner can normally be reached between 7:00-4:00 Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached at 571-272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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9-17-06



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